

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3
4 ALPS PROPERTY & CASUALTY
5 INSURANCE COMPANY,

6 Plaintiff,

7 vs.

8 KALICKI COLLIER LLP, *et. al.*,

9 Defendants.
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3:19-cv-00709-MMD-CLB

ORDER

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12 The parties have filed a litany of motions to seal various documents in this case.
13 These motions started with the filing of a motion for leave to file the complaint and
14 exhibits to the complaint under seal by Plaintiff Alps Property & Casualty Insurance
15 Company ("Alps"). (ECF No. 1). Based on the request to seal the complaint and its
16 exhibits, the parties then filed motions to seal subsequently filed documents that
17 referenced the complaint and/or its exhibits to comply with any subsequently entered
18 sealing order in response to Alps's Motion. (See ECF Nos. 9, 27, 29, 33, 37 and 39).
19 Therefore, resolution of each of these motions depends on the resolution to Alps's
20 Motion.

21 Alps's Motion argues there are "compelling reasons" to seal the entire complaint
22 and all of its attached exhibits. (See ECF No. 1, pp. 4-5). Defendants Kolicki Collier, LLP,
23 John Collier, and James Kolicki ("KC Defendants") filed a non-opposition to the Alps's
24 Motion, (ECF No. 8), by stating (without explanation) that they agree "there are
25 compelling reasons to support restricting public access to Alps's complaint and
26 responses thereto." (*Id.*) Defendant Robin Rumbaugh ("Rumbaugh") opposed. (ECF No.
27 7). After a thorough review of the filings, the court finds there are no compelling reasons
28 to seal the complaint or the attached exhibits and Alps's Motion must be denied. (ECF

No. 1). Based on the denial of Alps's motion, there is no need for any of the subsequently filed documents to be sealed either. Therefore, the court denies all other motions to seal as moot. (ECF Nos. 9, 27, 29, 33, 37 and 39).

I. LEGAL STANDARDS

There is a strong presumption of public access to judicial records that is predicated on the rights embodied in the First Amendment. See *Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006); *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003). Any party seeking to file court documents under seal bears the burden of overcoming that presumption. *Pintos v. Pac. Creditors Ass'n*, 605 F.3d 665, 678 (9th Cir. 2010) (quoting *Kamakana*, 447 F.3d at 1178).

The standard applicable to a motion to seal turns on whether the sealed materials are submitted in conjunction with a dispositive or a non-dispositive motion. Whether a motion is "dispositive" turns on "whether the motion at issue is more than tangentially related to the underlying cause of action." See *Center for Auto Safety v. Chrysler Group, LLC*, 809 F.3d 1092, 1101 (9th Cir. 2016), *cert. denied*, 137 S.Ct. 38 (2016). Various courts within the Ninth Circuit agree that a request to seal the complaint or material attached to the complaint is considered "dispositive" for purposes of a sealing request. See, e.g., *Victory Sports & Entertainment v. Pedraza*, 2019 WL 2578767, at *1 (D. Nev. June 24, 2019); *Birch v. Delporto*, 2019 WL 2298699, at *2 (D. Nev. May 30, 2019); *Billman Prop., LLC v. Bank of America, N.A.*, 2015 WL 575926, at *1 (D. Nev. Feb. 11, 2015) (collecting cases).

Parties "who seek to maintain the secrecy of documents attached to dispositive motions must meet the high threshold of showing that 'compelling reasons' support secrecy." *Kamakana*, 447 F.3d at 1180. The Ninth Circuit has indicated "compelling reasons' sufficient to outweigh the public's interest in disclosure and justify sealing court

1 records exist when such ‘court files might have become a vehicle for improper purposes,’
2 such as the use of records to gratify private spite, promote public scandal, circulate
3 libelous statements, or release trade secrets.” *Id.* at 1179 (citing *Nixon v. Warner*
4 *Commc’ns Inc.*, 435 U.S. 589, 598 (1978)). “The mere fact that the production of records
5 may lead to a litigant’s embarrassment, incrimination, or exposure to further litigation will
6 not, without more, compel the court to seal its records.” *Id.* (citing *Foltz*, 331 F.3d at
7 1136).

9 The burden to show compelling reasons is not met by conclusory assertions, but
10 rather the movant must “articulate compelling reasons supported by specific factual
11 findings.” *Id.* at 1178. For example, the Ninth Circuit has rejected efforts to seal
12 documents under the “compelling reasons” standard based on “conclusory statements
13 about the contents of the documents – that they are confidential and that, in general,”
14 their disclosure would be harmful to the movant. *Id.* at 1182. Such “conclusory offerings
15 do not rise to the level of ‘compelling reasons’ sufficiently specific to bar the public
16 access to the documents.” *Id.* In allowing the sealing of a document, the Court must
17 “articulate the basis for its ruling, without relying on hypothesis and conjecture.” *Pintos*,
18 605 F.3d at 679 (quoting *Hagestad v. Tragesser*, 49 F.3d 1430, 1434 (9th Cir. 1995)).

20 Even if compelling reasons are identified, any sealing order must be narrowly
21 tailored. *Press–Enterprise Co. v. Superior Ct. of Cal.*, 464 U.S. 501, 512 (1984). The
22 Supreme Court has instructed that a sealing order should have been “limited to
23 information that was actually sensitive,” that is only the parts of the material necessary to
24 protect the compelling interest. *Id.* Thus, even where a court determines that disclosure
25 of information may result in particularized harm, and the private interest in protecting the
26 material outweighs the public interest in disclosure, a court must still consider whether
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1 redacting confidential portions of the material will leave meaningful information available
2 to the public. *In re Roman Catholic Archbishop*, 661 F.3d 417, 425 (citing *Foltz*, 331 F.3d
3 at 1136–37).

4 **II. ANALYSIS**

5 Alps argues there are two “compelling reasons” to seal the entire complaint and
6 all of its attached exhibits: (1) the documents relate to a “private dispute” between the
7 defendants identified in the case; and, (2) some of the statements in the complaint
8 and/or the attached exhibits contain communications, or parts of communications,
9 between the defendants that were privileged attorney/client communications and/or work
10 product “at the time [they] were communicated.” (See ECF No. 1, pp. 4-5). In opposition,
11 Rumbaugh argues that Alps fails to establish that either of these assertions constitutes a
12 sufficiently compelling reason to seal the complaint or any of the attached exhibits. (ECF
13 No. 7). The court agrees with Rumbaugh.

14 **A. Private Dispute**

15 First, Alps’s assert that revealing a “private dispute” between two parties is, in
16 itself, a compelling basis for sealing a complaint and all of the attached exhibits fails for
17 several reasons. First, Alps has not articulated any specific factual findings to meet the
18 “compelling reasons” standard. As a practical matter, the filing of virtually all civil lawsuits
19 reveals the existence of a “private dispute” between two parties that is generally not
20 known to the public prior to the filing of a lawsuit. Alps has failed to explain how this
21 circumstance is any different or how the specific facts of this case would warrant the
22 extreme step of sealing the entire complaint and all exhibits thereto. Rather, Alps has
23 only provided a conclusory offering that these documents reveal a “private dispute,”
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1 which does not raise to the level of a compelling reason to seal the complaint or the
2 attached exhibits. *Kamakana*, 447 F.3d at 1182.

3 Alps cites only one case for its position that a “private dispute” is sufficient to
4 support sealing a complaint and exhibits – *United Rentals, Inc. v. Ahern Rentals, Inc.*,
5 2012 WL 5418355 (D. Nev. Nov. 12, 2012). However, as correctly pointed out by
6 Rumbaugh, *United Rentals* did not apply the “compelling reason” standard, which is
7 applicable to the current motion. *Id.*, at *1. Rather, that case only applied the “good
8 cause” standard for sealing a court record, which is a far less stringent standard to meet.
9 *Id.* Moreover, the documents at issue in *United Rentals* involved a settlement
10 agreement, which the court noted was entered into on the condition of confidentiality. *Id.*,
11 at *2. This is not the case here. Thus, this case does not support Alps’s position that a
12 sealing order is necessitated under the facts of this case.
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15 However, even if this were a proper basis to support sealing, the facts of this case
16 show that there does not appear to be anything private about the relationship between
17 the KC Defendants and Rumbaugh or the possible dispute that underlies this complaint.
18 First, the attorney/client relationship between the KC Defendants and Rumbaugh is a
19 matter of public record. Several of the exhibits attached to the complaint (which Alps
20 seeks to seal) are *publicly filed* court documents that clearly identify the KC Defendants
21 as legal representatives to Rumbaugh in her role as the trustee of the Edith and James
22 Harley Trust. (See, e.g., ECF Nos. 2-3, pp. 46-48; ECF No. 2-4, pp. 1-5 (Petition to
23 Confirm Trustee); ECF No. 2-4, p. 6 (Order Confirming Trustee); *Id.* at pp. 7-8 (Notice of
24 Entry of Order); *Id.* at pp. 13-18 (Petition to Return Trust Property); *Id.* at pp. 45-49
25 (California Complaint filed by Kolicki Defendants on behalf of Rumbaugh)). As such, the
26 relationship between the KC Defendants and Rumbaugh is not a private matter.
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Moreover, any dispute between the defendants arising from this relationship was arguably foreshadowed (at least in part) by other *publicly filed* court records, which are also attached as exhibits to the complaint. (See ECF No. 2-5 (motion to dismiss California case and order); ECF No. 2-6 (same)). These public records include motions to dismiss Rumbaugh's claims in a California lawsuit because her claims were filed outside of the applicable limitations period, which the court ultimately granted. (*Id.*) The KC Defendants represented Rumbaugh in the California action. Thus, neither the relationship nor the possibility of a dispute between the KC Defendants and Rumbaugh appear to be truly private.

Therefore, Alps's Motion fails to establish that revealing the alleged "private dispute" between the defendants is a compelling reason to seal the complaint or the exhibits attached thereto.

B. Attorney/Client Privilege

Next, Alps claims that the complaint and exhibits should be sealed because the documents contain communications and/or information that was covered by the attorney/client privilege and/or work product doctrines "when they were made." (ECF No. 1, pp. 5). This argument is equally unavailing.

The attorney-client privilege protects confidential disclosures made by a client to an attorney to obtain legal advice and an attorney's advice in response to such disclosures. *United States v. Chen*, 99 F.3d 1495, 1501 (9th Cir.1996) (quotation omitted), cert. denied, 520 U.S. 1167 (1997). "Its purpose is to encourage full and frank communication between attorneys and their clients and thereby promote broader public interests in the observance of law and administration of justice." *Upjohn Co. v. United States*, 449 U.S. 383, 389 (1981). Federal privilege law applies where the court's jurisdiction is based on a federal question. *Nat'l Labor Relations Bd. v. N. Bay Plumbing*,

1 *Inc.*, 102 F.3d 1005, 1009 (9th Cir. 1996) (citing Fed. R. Evid. 501); see *United States v.*
2 *Ormat Indus., Ltd.*, 2016 WL 4107682, at *2 (D. Nev. Aug. 1, 2016). The privilege is held
3 by the client and the client can waive the privilege. *Montgomery v. eTreppid*
4 *Technologies, LLC*, 548 F.Supp.2d 1175, 1177 (D. Nev. 2008). As a general rule, the
5 voluntary disclosure of privileged documents or communications to third parties waives
6 attorney-client privilege. *In re Pac. Pictures Corp.*, 679 F.3d 1121, 1126–27 (9th Cir.
7 2012).

8 Here, Rumbaugh, the client, was represented by the KC Defendants and has the
9 right to waive the privilege in any communications between herself and the KC
10 Defendants, including the communications at issue in this case. In her opposition, she
11 concedes she waived the attorney-client privilege in the alleged communications based
12 on her desire to pursue a malpractice claim against her former attorneys. (See ECF No.
13 7, p. 6). Based on Rumbaugh's waiver, there is no reason – much less a compelling
14 reason – to seal the complaint or the attached exhibits on this alternative basis.

15 **III. CONCLUSION**

16 **IT IS THEREFORE ORDERED** that Alps's motion for leave to file the complaint
17 and the exhibits to the complaint under seal, (ECF No. 1), is **DENIED**.

18 **IT IS FURTHER ORDERED** that the following motions for leave to seal various
19 documents under seal, (ECF Nos. 9, 27, 29, 33, 37 and 39), are **DENIED** as moot.

20 The Clerk's Office is **INSTRUCTED** to unseal the following documents in this
21 case: ECF Nos. 1, 2, 7, 8, 9, 10, 25, 26, 27, 29, 30, 33, 37, 38, 39 and 40.
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23 **DATED:** February 11, 2020.

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26 **UNITED STATES MAGISTRATE JUDGE**
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